

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA . Case Nos. 18-CR-579-02 & 04
.
v. . James A. Byrne U.S. Courthouse
.
ARTHUR ROWLAND, . 601 Market Street
HAKIM WILLIAMS . Philadelphia, PA 19106
.
Defendants. . (Heard in court)
.
. October 7, 2021
10:10 a.m.

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE HEARING
BEFORE HONORABLE GERALD J. PAPPERT
UNITED STATES DISTRICT COURT JUDGE

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1 THE COURT: I've been told you were the first to
2 arrive today.

3 MR. SCIOLLA: I was.

4 THE COURT: We have dually noted that.

5 MR. SCIOLLA: In spite of myself.

6 THE COURT: Thank you.

7 MR. SCIOLLA: Thank you, sir.

8 THE COURT: All right. So, Mr. Sciolla, you're doing
9 well.

10 MR. SCIOLLA: I'm hanging in there for an old guy.

11 THE COURT: Mr. Rowland. Mr. Rowland, good morning.

12 MR. ROWLAND: Good morning.

13 THE COURT: And with you, sir?

14 MR. PALIVIDAS: Mr. Palividas. Good morning, Your
15 Honor.

16 MR. SCIOLLA: Ellis Palividas, Judge. He's actually
17 attorney of record. He's going to be with me throughout the
18 trial.

19 THE COURT: All right. Pronounce your last name?

20 MR. PALIVIDAS: Palividas, Your Honor.

21 THE COURT: How --

22 MR. PALIVIDAS: Palividas.

23 THE COURT: Palividas?

24 MR. PALIVIDAS: Yes, sir.

25 THE COURT: Mr. Palividas, how are you?

1 MR. PALIVIDAS: I'm well, sir. Thank you.

2 THE COURT: Good. Sorry about that.

3 MR. PALIVIDAS: No problem.

4 THE COURT: Mr. Coleman, how you doing?

5 MR. COLEMAN: I'm good. Good morning, Your Honor.

6 How are you?

7 THE COURT: I'm doing fine. And, Mr. Williams?

8 MR. WILLIAMS: Good morning, Your Honor.

9 THE COURT: Good morning. Mr. Shapiro, good to see
10 you again. How are you?

11 MR. SHAPIRO: I'm well, Your Honor, and you?

12 THE COURT: And is that Mr. Stengel?

13 MR. STENGEL: It is, Your Honor.

14 THE COURT: That masked man is Mr. Stengel.

15 MR. STENGEL: Good morning.

16 THE COURT: Morning. And, Agent Becker?

17 AGENT BECKER: Good morning, Your Honor.

18 THE COURT: How are you?

19 AGENT BECKER: I'm good. How are you?

20 THE COURT: Everyone, counsel, if you're fully
21 vaccinated and you wish to remove your mask, you may. That
22 just goes for the people up here, not the folks in the gallery.
23 And, obviously, during the trial that will be the rule, as
24 well. You can keep it on whenever you want if you don't have a
25 speaking role. Obviously, lawyers for purposes of trying the

1 case, may have their masks off, as may the witnesses. So,
2 let's talk.

3 I know we've gone over jury selection and the process
4 before. The protocols for Covid have relaxed quite a bit over
5 the last year and a half and we're now trying cases normally
6 with the exception of the jury selection. The jurors, the
7 perspective jurors, will be given clear plastic face masks so
8 that you can see their faces. They will wear them for the
9 general session. We will then do the individual voir dire as
10 normal at sidebar, but ask that we all wear masks for the
11 jurors sake, during the individual sidebar. And then after the
12 jury is selected, the jurors will be asked, they can then trade
13 back into their own masks. They don't have to wear the clear
14 ones that we give them, and I just ask the jurors to keep their
15 masks on. We seat them in the jury box as normal, but we just
16 ask them to keep their masks on at all times, including in
17 deliberations unless they're eating or drinking. So, I for the
18 most part, I wear a mask off and on during the trial more out
19 of solidarity with the jurors, but -- and you can, you know,
20 guide yourselves accordingly. We have, Jeff, is it 60?

21 COURTROOM DEPUTY: Sixty.

22 THE COURT: Okay, and do -- so -- all right, so we
23 have -- we've ordered a group of 60. May I ask, do the people
24 in the back now intend to be here for jury selection?

25 UNIDENTIFIED SPEAKER: No.

1 UNIDENTIFIED SPEAKER: No.

2 UNIDENTIFIED SPEAKER: No.

3 THE COURT: No, okay. Because we won't be able to
4 seat -- no one will be able to sit in the gallery there during
5 jury selection because all the perspective jurors will be
6 there. If anyone wishes to view jury selection, please let us
7 know and what we would have to do probably is set up a remote
8 courtroom with a video feed, so that members of the public, if
9 they want, can view jury selection. So, if that's going to be
10 an issue, if any of you have friends or family who are intent
11 on watching jury selection, please let us know so we can
12 accompany that.

13 MR. SCIOLLA: We would not, Judge.

14 THE COURT: Okay. No, okay. And, so for -- I will
15 seat 12 jurors and two alternates unless -- the one thing I
16 want to talk about, how long -- I know we were talking roughly
17 a week and a half. There are fewer defendants now. I don't
18 know if that probably doesn't change the scope of the evidence
19 all that much. Mr. Shapiro, would you have a ballpark on the
20 length of time it might take the government to put its case in?

21 MR. SHAPIRO: Yeah, I think, Your Honor, the week and
22 a half was when we were at our current number of participants.

23 THE COURT: Okay.

24 MR. SHAPIRO: I think we had moved down from two
25 weeks to a week and a half. Defense counsel have been very

1 helpful in stipulating out records custodians, and firearms
2 people, and things of that nature.

3 THE COURT: Okay.

4 MR. SHAPIRO: I suspect it may -- it may go over one
5 week. It certainly will not be two. I mean it's conceivable
6 we could finish it within the week.

7 THE COURT: So --

8 MR. SHAPIRO: I wouldn't want to predict that we
9 will, but it's possible.

10 THE COURT: Six full trial days is a decent, you know
11 -- everything is ballpark. That's great. Thank you. And, not
12 holding the defense to anything, at least as we sit here today,
13 are you contemplating any witnesses?

14 MR. COLEMAN: No, Your Honor.

15 THE COURT: Okay.

16 MR. SCIOLLA: No, Your Honor.

17 THE COURT: All right. Thank you. So, and if there
18 are, obviously, please give me the names so I can read them to
19 perspective jurors, but okay. With a trial of that length
20 then, I'd probably be comfortable in 12 jurors and two
21 alternates. Does anybody disagree? We could go up to more
22 alternates if we needed to, but --

23 MR. SCIOLLA: I think that's fine, Judge.

24 MR. SHAPIRO: I was going to suggest more, simply
25 because we have the issue that some jurors at home and they

1 have a family member who has contact with somebody who has
2 Covid and now they have to isolate, and so the odds of losing
3 somebody, it seems to me, are great, but you've had -- I mean,
4 I know you've had a bunch of trials in the recent past so.

5 THE COURT: We have, but they've been short ones.
6 They've all been two to three days all in, which is why I was
7 focusing on the length.

8 MR. SHAPIRO: So, my worry is that we may lose people
9 who aren't themselves necessarily sick but who can't come in
10 because they're -- they have an exposure issue, so it may be we
11 don't lose the rest of the panel --

12 THE COURT: Right.

13 MR. SHAPIRO: -- but we may lose several people.

14 THE COURT: We could have four alternates. Seems to
15 be that -- seems to me, that's what you're hoping for.

16 MR. SHAPIRO: Well, that's what -- I'm at least --

17 THE COURT: What you think it prudent.

18 MR. SHAPIRO: I'm at least tossing it on the table as
19 a --

20 THE COURT: Okay. Does the defense have any thoughts
21 on that?

22 MR. SCIOLLA: That's fine, Judge. I wouldn't have a
23 problem with that and I think probably Paul makes good sense
24 with that. God forbid, you know -- of course, the irony would
25 be that the 16th one or the 15th one is the one that gives us

1 Covid, but -- anyway, I don't have any problem with four.

2 THE COURT: Well, then that would be -- all right, so
3 we can do that. So, we would seat 16 people, so with two
4 defendants, who's good at math? How many would we need to get
5 down to before the peremptories? And do you want extra strikes
6 for the alternates? Normally, we'd need to get down to 18.

7 UNIDENTIFIED SPEAKER: 32.

8 THE COURT: 32.

9 UNIDENTIFIED SPEAKER: Adding two, so 34.

10 THE COURT: Right. So, 34 if we add two. Do you
11 want -- does anybody want extra strikes for the alternates?
12 And, this obviously goes into trying to gage the length of jury
13 selection, right.

14 MR. SCIOLLA: I think we both would agree one extra.

15 THE COURT: One extra per side? So we'd --

16 THE COURT: Okay. We'll make a note of that. One
17 extra per side. So, we'd need to get to 36 before you start
18 the peremptories. Sixty is still comfortable, don't you think?
19 Yes, I think so. I think we're still comfortable at 60 given
20 the -- given the fact that the trial won't be all that long.
21 So, okay, everybody good with that? That will lengthen jury
22 selection but we have the full day set aside for it next
23 Thursday anyway. We should be okay. Just to again quickly
24 remind you, I will -- I have your voir dire questions from the
25 last time. If there's nothing else either of you -- any of you

1 wish to add, I'm content with taking those questions, working
2 them into the questions from my bench book, and any other
3 questions I typically ask, I'll ask those questions in the
4 general session myself. We'll have them raise their hand,
5 indicate yes. We'll keep track. When I'm done with the
6 general question, I'll turn to you and ask you if there's
7 anything else you'd like to ask me in the general questions,
8 general session. We'll then invite to sidebar for individual
9 voir dire anyone you wish to invite to sidebar, and we'll have
10 the questioning here. You'll make your motions for cause here
11 and I'll take care of them right at sidebar, and then we'll
12 just keep moving through until we get 18 people that we're all
13 happy with. Turn it back to you to exercise your strikes.
14 Jeff will have the form for you. You can work with him on that
15 and then -- and then we'll seat 16 people accordingly. Any
16 questions on jury selection at all?

17 (No audible response)

18 THE COURT: You look -- you look troubled?

19 MR. SHAPIRO: I'm just -- I'm just working on -- so
20 it -- the number of strikes are 10 and 6?

21 THE COURT: With an extra each.

22 UNIDENTIFIED SPEAKER: 12.

23 THE COURT: It's 11 and 7, right, with a
24 multi-defendant case.

25

1 UNIDENTIFIED SPEAKER: 7 and 11 normally.

2 THE COURT: 7 and 11 normally in a two defendant
3 case.

4 UNIDENTIFIED SPEAKER: So it's 8 and 12.

5 THE COURT: 8 and 12.

6 UNIDENTIFIED SPEAKER: Plus the 16 makes 32.

7 THE COURT: Plus -- okay. Right?

8 MR. SCIOLLA: That's fine.

9 THE COURT: Okay. You guys look about as good as
10 math -- at math as I am. But, that's one of the many reasons
11 we have Mr. Lucini running the whole show here, okay. All
12 right, the -- so, the current procedure, as I mention, is
13 really, you know, we don't have any special protocols for the
14 trial other than the masks that I've spoken about. Everything
15 else we've been able to, you know, do successfully, so
16 everything has worked great. Again, if we're going to need
17 places for people to view jury selection, please tell us. And,
18 if you have any questions on jury selection or court policies
19 and procedures prior to next Thursday, please let us -- reach
20 out to us.

21 With respect to, I'll just stay on the topic of
22 juries here, I went back in the archives and found the most
23 recent draft that we sent back to you of the jury instructions.
24 They were dates January 6th of 2020 and they had a covering
25 e-mail from our chambers, which went through all of the changes

1 that we had made to the proposed jury instructions. Is there
2 anyone who doesn't have the January 6th version or the covering
3 explanatory e-mail with respect to all the changes?

4 MR. COLEMAN: Your Honor, I do not have the e-mail.

5 THE COURT: All right. Okay.

6 MR. SCIOLLA: Yeah, I don't think I received the
7 e-mail either, Your Honor.

8 THE COURT: You got to check your e-mail.

9 MR. SCIOLLA: It seems I heard that before.

10 THE COURT: Yes.

11 MR. SCIOLLA: I'm checking it now.

12 MR. STENGEL: Your Honor, by the e-mail, do you mean
13 there was a document that had a sort of bullet point
14 explanation, a summary of either no substantive changes or
15 minor edits that -- is that what you mean by the e-mail
16 explaining?

17 THE COURT: There is an e-mail to each of you. Dear
18 Counsel, as Judge Pappert discussed on December 23, we attached
19 the most recent version of the proposed jury instructions, our
20 edits to the Government's submission, and reasons for them
21 should be self-explanatory given the comments and by comparing
22 the Government's proposed instructions with these. And, then
23 we have a multi-page document which explains all our changes.
24 Do you --

25 MR. STENGEL: I have that, Your Honor, yes.

1 THE COURT: You have that, Joe?

2 MR. COLEMAN: Yes.

3 THE COURT: Okay, so that e-mail was just that then.

4 You don't need the e-mail itself so you --

5 MR. COLEMAN: Obviously I don't need that, right.

6 THE COURT: Guy, do you have this?

7 MR. SCIOLLA: I don't have it with me, Your Honor,
8 but I'm sure I have it.

9 THE COURT: Well, I'll tell you what, just to make
10 sure, and does the Government have --

11 MR. STENGEL: Yes, Your Honor.

12 THE COURT: Okay. Well, Guy, we'll make a copy for
13 you just to be sure so, you know --

14 MR. SCIOLLA: That would be great.

15 THE COURT: -- you'll leave with a copy.

16 MR. SCIOLLA: Thanks, Judge.

17 THE COURT: It's been a while, have -- has anyone in
18 the last week in anticipation of this been able to go through
19 the jury instructions?

20 MR. STENGEL: Yes, Your Honor.

21 THE COURT: Okay. Mr. Sciolla?

22 MR. SCIOLLA: Yes, Your Honor.

23 THE COURT: And, Mr. Coleman?

24 MR. COLEMAN: Yes, Your Honor.

25 THE COURT: Okay. Anything that you wanted to take

1 up now in realizing that you know we'll have a little time.
2 Usually I'd like to get these put to bed so that in short trial
3 we can just go right into instructing the jury? These are more
4 substantive and we have a little more time, but any big picture
5 comments, Tim, that --

6 MR. STENGEL: I don't know that they're big picture
7 comments, Your Honor. I have one, two, three, four, maybe five
8 of them that I'd like to discuss at some point.

9 THE COURT: You want to do that now?

10 MR. STENGEL: Sure.

11 THE COURT: Okay. Go -- go right ahead.

12 MR. STENGEL: Sir, thank you. I'll just go in order
13 if that's okay --

14 THE COURT: Yes.

15 MR. STENGEL: -- going down the summary? What was
16 Government request 29, indictment in the conjunctive statute
17 and required proof in the disjunctive --

18 THE COURT: Yes, that's number -- yes, okay.

19 MR. STENGEL: Yeah, Number 29. We had -- we had
20 provided a, I wouldn't call it a lengthy explanation of the
21 conjunctive, disjunctive, issue, but --

22 THE COURT: Which we said is unnecessary and
23 confusing, that --

24 MR. STENGEL: Exactly, Your Honor. In the -- in the
25 interests of -- I don't know that I agree --

1 THE COURT: I'm laughing because I just had this
2 debate over this same instruction at my most recent trial two
3 weeks ago.

4 MR. STENGEL: How did it go?

5 THE COURT: I cried uncle at some point.

6 MR. STENGEL: Okay. Okay.

7 THE COURT: And gave it the --

8 MR. STENGEL: Okay, well --

9 THE COURT: There's no way I -- there's no way I
10 could believe the jurors understood a word of what I was
11 saying, but --

12 MR. STENGEL: So --

13 THE COURT: -- I read it really well. I mean, my
14 delivery, my cadence.

15 MR. STENGEL: I don't -- I don't doubt that, Your
16 Honor. There is an alternative. I -- I have used, at least in
17 the past, a somewhat simpler version of it.

18 THE COURT: Okay.

19 MR. STENGEL: Which I'm happy to provide to you, but
20 it says something like, before I discuss the elements of the
21 offense charged in the indictment, I'd like to instruct you on
22 the meaning of the word and when it is used in statutes or
23 indictments --

24 THE COURT: This is the one I gave a week and a half
25 ago.

1 MR. STENGEL: Except -- hold on.

2 THE COURT: All right.

3 MR. STENGEL: Where a statute specifies several
4 alternative ways in which an offense may be committed, the
5 indictment may allege the several ways in the conjunctive.
6 That is by using the word and. If only one of those
7 alternatives is proved beyond a reasonable doubt, that is
8 sufficient for conviction.

9 THE COURT: That's better than the one I gave --

10 MR. STENGEL: Hearing it full stop.

11 THE COURT: Man, I needed you a week and a half ago.

12 MR. STENGEL: I'm here.

13 THE COURT: All right.

14 MR. STENGEL: So, that's an alternative. We do --

15 THE COURT: Okay.

16 MR. STENGEL: It is the Government's position that
17 that is an appropriate instruction. Whichever form you'd like
18 to use, we're okay with it.

19 THE COURT: What you just read will be fine. You
20 could give it us and --

21 MR. STENGEL: Okay.

22 THE COURT: -- share it with counsel and -- I don't
23 object. There's nothing objectionable to the substance. I
24 just, you know, obviously where I can and I err on the making
25 sure the jurors hear whatever counsel thinks they need to hear,

1 but for obvious reasons, try to trim them down and remove
2 repetitiveness, and particularly in a case like this where the
3 instructions will take probably about an hour to read.

4 MR. STENGEL: Understood. Understood, Your Honor.

5 THE COURT: And I do give them to the jury, as well,
6 as you know. I give each of the jurors a set for their
7 deliberations. Yes.

8 MR. STENGEL: Okay, I do --

9 THE COURT: Yes.

10 MR. STENGEL: I do recall that so --

11 THE COURT: Okay.

12 MR. STENGEL: -- on your point of cutting
13 instructions that are duplicative, Number 41, Government
14 Request 41, which was a method of proving knowledge which use
15 cut as duplicative of the knowingly and intentionally
16 instruction.

17 THE COURT: Understood, okay. Got it.

18 MR. STENGEL: I don't think that it's -- it is
19 duplicative, but rather complimentary. The -- you -- the Court
20 references Government Request 40, in which we would instruct,
21 this is the burden of what the Government has to prove. 41
22 really speaks to a method through which we are able to meet
23 that burden. So, I don't know that they're duplicative, but
24 rather complimentary, and it would be our -- it's our position
25 that 41 should be included along with 40.

1 THE COURT: Okay.

2 MR. STENGEL: You had a very similar instruction in
3 47, but then had also proposed that we just combine that with
4 an earlier method of proving knowingly and intentionally, and
5 we are -- I think that makes perfect sense not to read the same
6 instruction twice.

7 THE COURT: Okay.

8 MR. STENGEL: Government Request 51,
9 attempt-impossibility, this is another one that --

10 THE COURT: Got it.

11 MR. STENGEL: -- you rejected as unnecessary, and
12 this one is potentially violative of the jury's fact finding
13 role. We had provided a somewhat fact specific explanation for
14 this one and I -- I take Your Honor's point about the violating
15 the jury's fact finding role. But, there was a final sentence
16 in the paragraph that you cut, which I do think is appropriate
17 and makes the instruction more clear, and that's the sentence,
18 as long as you find the Government has proven beyond a
19 reasonable doubt that the defendant defended to possess a
20 controlled substance with intent to distribute and took a
21 substantial step toward committing that offense, you may find
22 the defendant guilty of an attempt even though he never
23 actually completed the crime.

24 THE COURT: Obviously, a correct statement of the law
25 in looking at this now, isn't that covered in what would be

1 presumably an earlier instruction giving the elements of the
2 attempt charge.

3 MR. STENGEL: I'm looking at Number 50 and Number 50
4 closes with respect to the substantial step, you may not find
5 that the --

6 THE COURT: Yes.

7 MR. STENGEL: -- defendant guilty of attempting to
8 possess methamphetamine with intent to distribute it, merely
9 because he made some plans to or some preparation for
10 committing that crime. Instead, he must find that the
11 defendant took some firm, clear, and undeniable action to
12 accomplish his intent. So, that really deals more with a
13 substantial step. This deals with the fact that it was whether
14 the completion was impossible. In this case, because the
15 packages were -- were seized by the Government, so --

16 THE COURT: Okay.

17 MR. STENGEL: -- there was no -- no time for the
18 defendants to have completed that crime, and they can't make
19 the argument that that is somehow a defense to the attempt.

20 THE COURT: So, the -- what you read there, Mr.
21 Stengel --

22 MR. STENGEL: Yes.

23 THE COURT: -- I don't -- let's see, do I have that
24 one in front of me?

25 MR. STENGEL: You -- it would be in the Government's

1 suggested jury instructions. It's the last sentence of the
2 second paragraph, the paragraph which we added.

3 THE COURT: Of Number -- of Number 51?

4 MR. STENGEL: Yes, sir.

5 THE COURT: Let's see. You know what, I may -- I
6 don't have your initial -- all I have is our modifications.
7 Would you mind giving me that what you just read?

8 MR. STENGEL: Not at all.

9 THE COURT: If you have an extra copy, and we can
10 work that back in and obviously --

11 MR. STENGEL: Sure. I also -- I've typed all this
12 out. I'm happy to e-mail it to Chambers after the fact if that
13 would be helpful.

14 THE COURT: That would be great.

15 MR. STENGEL: Okay.

16 THE COURT: That would be great. Appreciate that.
17 I'll -- do you mind if I take it in the interim?

18 MR. STENGEL: Not at all.

19 THE COURT: Okay, great. Thank you. That was 51,
20 okay.

21 MR. STENGEL: Number 53, the quantity of drug
22 interrogatory.

23 THE COURT: Yes, got it.

24 MR. STENGEL: You had it at the time, rejected -- or
25 edited this to be more consistent with Phillips, and at the

1 time, though our office's practice was to request instructions
2 that were not necessarily in line with Phillips, your decision
3 was absolutely correct. Since then, the Third Circuit has
4 handed down the Williams case, which did change the jury
5 instruction as to --

6 THE COURT: Okay.

7 MR. STENGEL: -- drug weight, such that we need to
8 find a -- the statutory maximum penalty is determined -- excuse
9 me, the mandatory minimum term of imprisonment is determined
10 separately for each defendant.

11 THE COURT: Was -- Williams was within the last year
12 and a half, wasn't it?

13 MR. STENGEL: It was -- yes, it was March 2020, so it
14 was after --

15 THE COURT: After this, okay.

16 MR. STENGEL: -- we had talked about this. Yeah.

17 THE COURT: Okay. Yes, if -- then let's -- that's
18 Number 53. If you have a proposed update to that that's in
19 line with the Third Circuit's decision in Williams, we'll work
20 that in.

21 MR. STENGEL: I do. I have the one that we had
22 previously submitted, so I can e-mail that --

23 THE COURT: Okay.

24 MR. STENGEL: -- to Chambers as well if that's --

25 THE COURT: Please. Okay, great.

1 UNIDENTIFIED SPEAKER: Would you send me a copy of
2 that?

3 MR. STENGEL: Absolutely, yeah.

4 MR. SCIOLLA: So that's going to change Number 53?

5 MR. STENGEL: It will change Number 53. Yes,
6 absolutely.

7 MR. SCIOLLA: Okay.

8 MR. STENGEL: Number 62 and 63, you had edited our
9 bifurcated of possession of a firearm by a felon count such
10 that they were -- such that they would comply better with the
11 Rahaif decision.

12 THE COURT: Right.

13 MR. STENGEL: Since that, the Third Circuit model
14 instructions have been amended to include a post Rahaif
15 instruction.

16 THE COURT: Yes.

17 MR. STENGEL: Your instruction is strikingly on
18 point, but it's not exactly so I'm just drawing your attention
19 --

20 THE COURT: That's a nice way to -- that's a nice way
21 to state that. Thank you.

22 MR. STENGEL: So, if you -- you're prescient there,
23 Your Honor, but if you -- if --

24 THE COURT: Okay.

25 MR. STENGEL: I'm just flagging it in case you want

1 to follow the model instruction --

2 THE COURT: So we now have an updated model that
3 reflects --

4 MR. STENGEL: We do. We do.

5 THE COURT: -- Rahaif and that's what we'll give.

6 MR. STENGEL: We do.

7 THE COURT: Okay.

8 MR. STENGEL: And that's all I have, Your Honor.

9 THE COURT: That's perfect. Thank you.

10 MR. STENGEL: Thank you.

11 THE COURT: Obviously, Mr. Coleman, Mr. Sciolla, will
12 send these back around again. Mr. Shapiro and Mr. Stengel,
13 having tried cases before me before know that it's kind of an
14 iterative process with me with the jury instructions. We send
15 them back and forth throughout the trial. We discuss them, you
16 know, periodically, because I just don't like to have a lot of
17 down time between closing statements and charging the jury.

18 MR. SCIOLLA: That's fine, Judge.

19 THE COURT: Yes, okay.

20 MR. SCIOLLA: I do have your memo and --

21 THE COURT: Oh, you do. Okay.

22 MR. SCIOLLA: Yeah. I've been following everything
23 on the --

24 THE COURT: So, this one, Guy?

25 MR. SCIOLLA: Yeah. I'm all set.

1 THE COURT: Okay, so you -- you do have it. Okay.

2 MR. SCIOLLA: I checked my e-mail today. But, if it
3 would be okay, when you're final instructions are complete, if
4 we could just get a copy of those?

5 THE COURT: Oh, absolutely. We will --

6 MR. SCIOLLA: Just the amendment.

7 THE COURT: We will implement -- we will update the
8 version to include the points, the changes Mr. Stengel has
9 asked for, for the reasons he asked for them. We will date
10 that draft. We'll probably have that out to you next week
11 early. We'll date -- we'll circulate that to everybody.

12 MR. SCIOLLA: Great.

13 THE COURT: By e-mail. Okay, good stuff. Mr.
14 Stengel, thank you. That's very helpful.

15 MR. STENGEL: Thank you, Your Honor.

16 THE COURT: All right. I have the Government's --
17 and obviously we have -- I'm assuming that in the next -- what
18 I -- what you'll see obviously is where we needed to do so, by
19 the time we put these jury instructions together, Ms. Bradford,
20 was -- we have removed references to all the defendants who are
21 no longer going to trial. Okay. All right. The Government's
22 witness list, I know I just had somewhere. Okay. All right,
23 so in reading Mr. Akwaboah's name, should I say he's from Los
24 Angeles?

25 MR. STENGEL: Yeah, that makes sense.

1 THE COURT: And, obviously, Agent Becker is with the
2 Philadelphia FBI, right?

3 AGENT BECKER: Yes.

4 THE COURT: Ms. Bradford, should I also describe her
5 as being from Los Angeles?

6 MR. STENGEL: Yes, Your Honor.

7 THE COURT: Okay. And, remind me please Timothy
8 Buck?

9 MR. SHAPIRO: He was the former owner of 3900 Ford
10 Road apartment.

11 THE COURT: Okay.

12 MR. SHAPIRO: He currently resides in Florida, but he
13 did live here until he retired to Florida.

14 THE COURT: Formerly of Philadelphia, now lives in
15 Florida. Do we know Anthony Colarulo's rank with the PPD, not
16 that that's dispositive?

17 UNIDENTIFIED SPEAKER: He's a police officer.

18 THE COURT: Officer, okay. Special Agent Clint, and
19 it's Chlebowski, as I remember, FBI, Philadelphia, as well,
20 right?

21 MR. STENGEL: He's actually out of Harrisburg, Your
22 Honor.

23 THE COURT: Oh.

24 MR. STENGEL: Formerly of Philadelphia.

25 THE COURT: Kevin Coleman, special agent?

1 MR. SHAPIRO: Special agent, yes. I omitted that.

2 THE COURT: That's okay. And Philly?

3 MR. SHAPIRO: He is in Washington D.C., but formerly
4 of here.

5 THE COURT: How do I pronounce the next name,
6 Guerschon?

7 MR. SHAPIRO: I believe that's correct.

8 THE COURT: Guerschon, is it Dede?

9 AGENT BECKER: Yes, Your Honor.

10 THE COURT: And male, female?

11 AGENT BECKER: Male, Your Honor.

12 THE COURT: And, just in from Philadelphia?

13 AGENT BECKER: Yes.

14 THE COURT: Christian Pfeiffer (phonetic) --

15 MR. SHAPIRO: Yes.

16 THE COURT: Hoffern (phonetic), California police
17 officer?

18 AGENT BECKER: Police officer, yes.

19 THE COURT: Eric Frank, I assume that's Brea.

20 AGENT BECKER: Yeah, the City of Brea, and he's a
21 sergeant, Eric Frank, now.

22 THE COURT: Special Agent Korrina George?

23 AGENT BECKER: Yes.

24 THE COURT: FBI Philly?

25 AGENT BECKER: Formerly Philly, Your Honor. I'm not

1 -- D.C. area. I'm not really sure.

2 THE COURT: Special Agent Eugene Giallombardo?

3 MR. STENGEL: Yes, Your Honor.

4 THE COURT: DEA, Philly.

5 MR. SHAPIRO: Yes.

6 THE COURT: Special Supervisory Special Agent James

7 Kreiger (phonetic)?

8 MR. SHAPIRO: Yes.

9 AGENT BECKER: Philadelphia.

10 MR. SHAPIRO: Kerry Martin (phonetic).

11 MR. SHAPIRO: Philadelphia.

12 THE COURT: Are these just citizens? She has no
13 title or -- okay.

14 AGENT BECKER: That's correct.

15 THE COURT: Special Agent Derek Parker (phonetic),
16 FBI, Philadelphia?

17 MR. STENGEL: He's actually from the Southern
18 District of Illinois, Your Honor, Springfield, Illinois.

19 THE COURT: Oh, okay. Robert Purnell.

20 MR. SHAPIRO: Philadelphia.

21 THE COURT: Citizen?

22 AGENT BECKER: Yes.

23 MR. STENGEL: Yes.

24 THE COURT: Special Agent Charles Simpson. I know
25 Agent Simpson. He's still in Philly, right?

1 AGENT BECKER: No, Your Honor. He's actually a
2 supervisory special agent now out of Newark.

3 THE COURT: Oh, okay. James Spurnak (phonetic).

4 MR. SHAPIRO: Los Angeles also.

5 THE COURT: And Stacy Woods (phonetic).

6 MR. SHAPIRO: Is here.

7 THE COURT: Philly, okay. Very good. Thanks for
8 that list. I appreciate it. Work that in. Okay.
9 Stipulations, be they witnesses, legal issues, stipulations of
10 fact. Obviously, we will work those into the appropriate model
11 jury instruction. I will, if they are stipulations as to what
12 a witness would say, I can read that stipulated testimony to
13 the jury at the time you would present it. I would then reread
14 it probably giving the final instructions and the stipulations
15 in the final jury instructions. What's the scope of the
16 stipulations we have? I know records custodians.

17 MR. SHAPIRO: So, and -- we had two sets, if the
18 Court recalls, at the semi-final final conference.

19 THE COURT: Right.

20 MR. SHAPIRO: And, so we have those same ones, and
21 then there's an addition set that counsel have agreed to in
22 principle. We're still --

23 THE COURT: Okay.

24 MR. SHAPIRO: I'm still waiting to hear if there are
25 objections to language. But, I can provide sets to the Court

1 now and you can --

2 THE COURT: Would you want -- would you prefer to
3 wait and resolve any -- all the remaining hanging chads and
4 then just give me one master list or I'll take what you have
5 now? Happy to do that.

6 MR. SHAPIRO: Yeah, I was -- I was going to just --
7 and they -- they are sort of separate by subject matter.

8 THE COURT: Oh, okay. Okay.

9 MR. SHAPIRO: And the first two are separated from
10 each other because ones that are firearms related ones that
11 would go in the bifurcated case. So, I mean, I don't expect
12 that there are going to be substantial changes and it will give
13 Your Honor a sense of where we're headed.

14 THE COURT: Perfect, okay.

15 MR. SHAPIRO: So if I may?

16 THE COURT: Yes.

17 MR. SHAPIRO: I have copies for everybody.

18 THE COURT: Great. This is the same. No, okay.
19 Okay, as to -- good. Perfect. These are great. Thank you so
20 much to counsel on both sides. Appreciate it very much.
21 Great.

22 MR. SHAPIRO: It really will allow us to move along
23 much --

24 THE COURT: I appreciate that very much. Yes, it
25 will. Thank you. That's fantastic. Okay. Have -- has the

1 Government -- how are we on the trial exhibits? Have they yet
2 been shared with defense counsel? Has defense counsel had an
3 opportunity to review, object, and anything? Where are we in
4 that process?

5 MR. SHAPIRO: So, the answer to the first part of
6 that question is mostly yes, and the answer to the second part
7 is pretty much no.

8 THE COURT: Okay.

9 MR. SHAPIRO: So, they were at my office yesterday
10 and I provided them with a disk that contains the vast
11 majority, copies of the vast majority of the exhibits.

12 THE COURT: All right.

13 MR. SHAPIRO: So, they do have them, but
14 realistically they haven't had an opportunity to go through
15 them.

16 THE COURT: All right.

17 MR. SHAPIRO: I have provided them with an exhibit
18 list that I e-mailed them late last night and I can provide the
19 Court --

20 THE COURT: Yes, please.

21 MR. SHAPIRO: -- with a copy as well. And, I expect,
22 based on our conversation yesterday, that there aren't going to
23 be any serious issues, and if there are, there aren't going to
24 be many of them.

25 THE COURT: Okay. Thank you.

1 MR. SHAPIRO: My expectation is that we will have
2 books, one for each counsel, one for the witness, one for the
3 Court. Does the Court want two? One for Your Honor's law
4 clerk?

5 THE COURT: Yes, please. Yes, please.

6 MR. SHAPIRO: Two for the Court and one for us. But
7 -- and if it's all right for the Court, I would be inclined to
8 leave a book on the witness stand because --

9 THE COURT: That would be great.

10 MR. SHAPIRO: -- many witnesses find it easier.

11 THE COURT: Yes. Okay. Thank you very much for
12 this. And, to defense counsel, I know you've just gotten the
13 disc with these. If you could please look them over between
14 now and next Thursday, and if there are any that are going to
15 present any issues that I have to take up, I'd love to be able
16 to at least know what they are before we begin the trial.

17 MR. COLEMAN: Yes, Your Honor.

18 THE COURT: Okay. Thank you very much. Will we have
19 any live expert witnesses now or has everything been stipulated
20 to with experts? Expert witnesses?

21 MR. SHAPIRO: The only -- the only issue, there will
22 be one drug trafficking expert who will testify and he's
23 indicated on the list.

24 THE COURT: Yes, and that is?

25 MR. SHAPIRO: You did so well with his name last

1 time, Your Honor. Gialumbarto.

2 THE COURT: Got it.

3 MR. SHAPIRO: But, other than that --

4 THE COURT: And that will be the standard testimony
5 based on his experience as to lingo and all that other stuff?
6 Okay.

7 MR. SHAPIRO: And tools of the trade.

8 THE COURT: Tools of the trade, okay. But, he's not
9 the over -- is the over -- he's not the overview person, right?

10 MR. SHAPIRO: No.

11 THE COURT: Yes.

12 MR. SHAPIRO: And, actually, that's a perfect segue.
13 So, Agent Becker will -- we expect, as long as the Court
14 doesn't have a problem, to have her testify twice, once toward
15 the front of the trial to explain how the investigation went,
16 and then once at the end as a summary witness.

17 THE COURT: Yes, that's fine. Okay. And, if
18 obviously the defense anticipates any objections to Agent
19 Gialumbarto's expert testimony on drug trafficking, please let
20 me know.

21 MR. COLEMAN: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SCIOLLA: Is there a CD for him available?

24 UNIDENTIFIED SPEAKER: Yes.

25 THE COURT: I'm sure it will be in the stuff that

1 you've been given if it --

2 MR. SHAPIRO: So, we will send them the required
3 letter outlining testimony and the CD shortly.

4 THE COURT: Thank you. Okay, great. Any issues
5 anticipated with respect to lay opinion witness testimony Rule
6 701 stuff? It's kind of a blurry area. I know. I don't think
7 the overview witnesses fall into that. The drug trafficking
8 witness will be an expert. I think that should probably not be
9 an issue.

10 MR. SHAPIRO: I don't think it's going to be an
11 issue. The only -- the place that it would come up would be,
12 several of the agents are going to testify about carrying out
13 searches and so they will be testifying about what they did and
14 how they did it, but they of course are --

15 THE COURT: They're there. That's a -- that's --

16 MR. SHAPIRO: They have a level of expertise and so
17 they draw on that in doing what they do, so those are the kinds
18 of witnesses where that issue can arise, but --

19 THE COURT: Okay.

20 MR. SHAPIRO: -- particularly given that we have the
21 expert who is going to testify as an expert. I don't foresee
22 it being an issue.

23 THE COURT: Okay, thank you. Do you have an updated
24 and mercifully much shorter verdict form? Not yet?

25 MR. SHAPIRO: Not yet.

1 THE COURT: That's okay. Next -- next Thursday is
2 fine.

3 MR. SHAPIRO: Oh, right --

4 THE COURT: The last one was really long because it
5 had everybody in it.

6 MR. SHAPIRO: So, it's -- Mr. Stengel points out to
7 me that on the upside, we're going to lose some defendants so
8 we'll lose some questions. But, on the downside, with the
9 Williams case, there may be more questions to be added so.

10 THE COURT: Okay. By next week?

11 MR. STENGEL: Not a problem.

12 THE COURT: Not a -- great. Thank you. The -- your
13 trial memorandum remains the same with the exception of
14 deletions of -- okay. So, we had -- there were evidentiary
15 issues, I'll turn to defense counsel, that were outlined in the
16 trial memorandum that I just want to make sure you're all okay
17 with these issues that, as you know, obviously come up
18 frequently in these types of cases, but summary charts. It
19 seems I didn't look through it. Might there be a stipulation
20 that will relieve us of the need to present the 922G-1 counts
21 to the jury afterwards? Are we still -- I thought I saw a
22 stipulation that might take care of that. No?

23 MR. SHAPIRO: It's still going to have to be
24 bifurcated. I don't know that there will be actual testimony.

25 THE COURT: Oh, yes. No, no. We'll bifurcate it but

1 --

2 MR. SHAPIRO: But I don't -- I don't -- I think the
3 stipulations will avoid the necessity of testimony as to
4 status.

5 THE COURT: Got it. Got it, okay.

6 MR. SCIOLLA: I would agree.

7 THE COURT: Were there any other legal issues
8 outlined in the Government's trial memorandum with which the
9 defense disagreed or wants to raise argument or objection? The
10 presentation of summary charts under 1006, I think it is, the
11 evidence of the possession of firearms as part of drug
12 trafficking, the appropriate redaction of Mr. Williams' post
13 Miranda statements, such that they are used only against him
14 and any other defendants for the Bruton issues. We'll -- Mr.
15 Shapiro and Mr. Stengel, are there references in Mr. Williams'
16 statements to defendant's other than Mr. Rowland with those
17 witnesses -- with those people now either not being part of the
18 case or having changed their plea, do those need to be redacted
19 as well?

20 MR. SHAPIRO: So, the answer to the first part of
21 that question it, I believe, and Mr. Coleman can correct me if
22 I'm wrong, I believe the only one is Mr. Banks who will be
23 testifying anyway.

24 THE COURT: Okay.

25 MR. SHAPIRO: So, I don't think factually --

1 THE COURT: So we don't have to worry about that.

2 MR. SHAPIRO: -- it's a problem.

3 THE COURT: Okay.

4 MR. SHAPIRO: But I don't know that -- I don't think
5 legally -- it's certainly not a Bruton problem anyway because
6 they don't have --

7 THE COURT: Right.

8 MR. SHAPIRO: -- they don't have a dog in the fight.

9 THE COURT: Right. Agree.

10 MR. COLEMAN: I seem to recall, of course look at the
11 video again, but I seem to recall that it was only dealing with
12 banks. There may have been mention of Ms. Bradford, Danielle
13 Bradford, but I know she pled also so.

14 THE COURT: And she's going to testify?

15 MR. SHAPIRO: She's going to testify.

16 MR. COLEMAN: And she's going to testify so --

17 THE COURT: Okay.

18 MR. COLEMAN: -- I don't there will be issues.

19 THE COURT: Joe, if you see in that video any other
20 names that we need to worry about to make sure we don't have
21 any Bruton issues or, I guess, the only Bruton issue we'd have
22 would be with respect to Mr. Rowland and that will be all
23 redacted I'm sure, so okay.

24 MR. SCIOLLA: I don't think there's any reference to
25 Mr. Rowland at all by Mr. Williams.

1 THE COURT: Okay, great. It makes it even easier.

2 MR. SCIOLLA: Yeah, I think we're good.

3 THE COURT: All right, good.

4 MR. COLEMAN: But, I'll let the Court know if I see
5 any issues.

6 THE COURT: Please, thank you.

7 MR. SHAPIRO: I think we took it out.

8 UNIDENTIFIED SPEAKER: Yeah.

9 MR. SHAPIRO: And, so the Court knows. We have
10 worked -- we have worked on a redacted version of that
11 statement that is, as the Court would say, mercifully shorter.
12 It's still not short, but it is shorter, and we've removed a
13 bunch of things that were potentially problematic, both Bruton
14 and otherwise.

15 THE COURT: I appreciate that very much and obviously
16 if there are any issues -- I'm only sensitive to that because I
17 had a trial where we, man, we were on pins and needles trying
18 to navigate a similar issue and we successfully did, but it
19 wasn't without a lot of stress, worrying if a name was going to
20 get blurted, you know what I'm saying, so this is a lot
21 cleaner. But, anyway, that's just why I raise it now. The co-
22 conspirator statements under 801(d)(2)(E), that's all pretty
23 straightforward stuff. Admissions of party opponents, and the
24 Almonte issue, use of notes and reports to cross examine, all
25 again very straightforward stuff. If -- was there any -- were

1 there any anticipated legal issues in the Government's trial
2 memorandum that you would object to, have any problems with,
3 want to call to my attention?

4 MR. SCIOLLA: Judge, I would not, but I did speak
5 with, well, Tim and Paul about this, there is significant
6 background information that's been provided by Mr. Banks
7 pertaining to Mr. Rowland --

8 THE COURT: Okay.

9 MR. SCIOLLA: -- that has nothing to do with this
10 conspiracy. And, I'm advised -- they've advised me that
11 they've advised Mr. Banks to stay away from all of that, and I
12 just want the record to be clear that I completely concur with
13 them that none of that information which could be highly
14 prejudicial to Mr. Rowland is part of this trial or part of any
15 other conspiracy, so I know that there's reference --

16 THE COURT: Give me an example of the nature of
17 something.

18 MR. SCIOLLA: Well, Mr. Banks has related to the
19 Government that he believes that Mr. Rowland was involved in
20 other criminal activity, none of which is involved in this
21 case.

22 THE COURT: Okay.

23 MR. SCIOLLA: Specifically -- well, one allegation
24 is, is that there's a murder involved that supposedly Mr.
25 Rowland paid for, and I've been advised that Mr. Banks has been

1 admonished to not bring any of that information into the record
2 in this case.

3 THE COURT: Knowing these guys, I'm sure the direct
4 examination questions will keep him out of those areas, you
5 know, and if you have any concerns and you maybe see a train
6 coming down the track that you want to ward off, I'll follow
7 your cue accordingly on that.

8 MR. SHAPIRO: And, I had suggested to both counsel
9 that they remind me before Mr. Banks testifies to remind him
10 that --

11 THE COURT: We'll all remind each other.

12 MR. SHAPIRO: -- we have another -- but that we have
13 another session with him and I will instruct him, as I
14 typically do in these situations, that if he gets a question
15 from either side that he believes the truthful answer to which
16 calls for something which we've told him we're not talking
17 about, then he should just sit there and not answer the
18 question.

19 THE COURT: Okay.

20 MR. SHAPIRO: So that his silence will be a cue that
21 we need to convene at sidebar.

22 THE COURT: Very good. Okay.

23 MR. SCIOLLA: And the only thing, Judge, is that we
24 did have a back and forth on this --

25 MR. COLEMAN: Before we go into that, Guy, can I just

1 jump onto that last point real quick?

2 MR. SCIOLLA: Yes, excuse me. Yeah.

3 MR. COLEMAN: Yeah, and it's part of Mr. Sciolla was
4 saying, Mr. Banks, at some point, had mentioned in one of his
5 proffer sessions that Mr. -- he had seen Mr. Williams on prior
6 occasions carrying a firearm. Obviously, I said well that and
7 other drug related activity has nothing to do with this case,
8 so --

9 THE COURT: Okay.

10 MR. COLEMAN: -- that's part of the issue and of
11 course I'll talk to counsel before --

12 THE COURT: Okay.

13 MR. COLEMAN: -- Mr. Banks testifies, but that's --

14 THE COURT: I appreciate that. Okay.

15 MR. COLEMAN: -- issue that --

16 THE COURT: Yes, absolutely.

17 MR. COLEMAN: Obviously I'm not going to step on any
18 of that so.

19 THE COURT: Yes, okay. I understand. So, I
20 appreciate you highlighting the issue and we'll all just stay
21 on high alert and make sure.

22 MR. SHAPIRO: And defense counsel obviously have to
23 be careful in their cross examination that --

24 MR. SHAPIRO: Well, yeah, and certainly I'm not going
25 to ask Mr. Banks --

1 THE COURT: Goes without saying.

2 MR. SHAPIRO: -- has he ever seen Mr. Williams with a
3 firearm in his life.

4 THE COURT: Yes. Okay.

5 MR. SHAPIRO: But I've had many trials where these --
6 I ask a completely unrelated questions and --

7 THE COURT: And it comes out.

8 MR. SHAPIRO: -- it's offered out of nowhere, well,
9 I've seen him with a gun many times.

10 THE COURT: Look, hopefully we'll never get to that
11 point.

12 MR. SHAPIRO: Right.

13 THE COURT: If we do, we'll talk about the
14 appropriate construction, a motion to strike, appropriate
15 instruction to the jury, which you know we'll -- we'll
16 collaborate on and I'll make sure --

17 MR. SCIOLLA: Yeah, hopefully that won't be
18 necessary.

19 THE COURT: Certainly that's my hope as well. Yes.

20 MR. SCIOLLA: The other issue, Judge, that Mr.
21 Coleman and I would raise, as I said, we had some conversation
22 with Mr. Shapiro yesterday, Mr. Banks, at some point in the
23 past, as you all know probably, has a criminal record and a
24 conviction for drugs, but also was at some point an attempted
25 cooperator. Apparently at a state level, he agreed some

1 portion of an agreement, that he would cooperate with the FBI.
2 At some point in time he's disconnected from that relationship
3 because he wasn't being either completely honest or completely
4 accurate or truthful about information the Government --

5 THE COURT: With the state authorities?

6 MR. SCIOLLA: With the FBI apparently because it was
7 with whom -- it was with the FBI that he had made the agreement
8 at the state level, and obviously as many times as you well
9 know, cooperating law enforcement agencies come together to get
10 information from any one individual that could be provided to
11 all agencies. Our understanding from a very small squib of
12 information that was provided to us is that his continued
13 cooperation was terminated because he was not considered either
14 credible or complete. And, we want to raise that at cross
15 examination and the Government may have an objection and I'd
16 like to sort of get that squared away today.

17 THE COURT: All right.

18 MR. COLEMAN: Judge, if I may just add a little more,
19 as well, and this is coming from the little bit of information
20 we received. In particular in an affidavit on Page 5 it states
21 that it was in September of 2014 that Banks participated in a
22 non-custodial interview and agreed to talk with law
23 enforcement. It doesn't indicate here but I believe the
24 Government had indicated to us that that was with a state
25 agency at the time, and he admitted into being involved in

1 trafficking cocaine. After that, he was opened as a
2 confidential informant by the FBI.

3 THE COURT: This goes back to 2014, Joe, did you say?

4 MR. COLEMAN: 2014, yes. In December 2014 he was
5 closed as an informant because the agents, federal agents, were
6 concerned that he was not fully forthcoming and because he was
7 arrested for unrelated conduct while cooperating, so Mr.
8 Sciolla and I believe that that is relevant, not for just
9 propensity, for truthfulness, but for under 404 motive to
10 fabricate, specifically if Mr. Banks, in 2014, had made
11 attempts to cooperate with the federal government, with the FBI
12 and they closed him out like Mr. Sciolla said because either he
13 was not forthcoming or not credible, now when he is arrested in
14 2018 by the federal government, and he wants to cooperate
15 again, he has more -- he has motive to give as much information
16 as he can because he's already been deemed by that agency to be
17 not forthcoming, not credible, whatever it may be. So, it's
18 our position, not to speak for Mr. Sciolla, but it is my
19 position and I believe it's his position, now Mr. Banks has
20 incentive to say what he knows, what he may not know, and to
21 fabricate, Judge, because he wants to give the Government every
22 single shred of things that he can, and even if he doesn't have
23 enough -- or enough information, he can make up certain things
24 to satisfy the Government that now he's not withholding
25 information like he was in the past.

1 THE COURT: Well, so you're looking at really his
2 motive, as I understand, right --

3 MR. COLEMAN: Motive to fabricate.

4 THE COURT: -- as I understand it. So, now the fact
5 that he was cut loose from his role as a cooperator four years
6 prior, you believe now gives him additional motive to spin as
7 many yarns as he can to save himself. Why would that be
8 necessary? Don't you already have the standard impeachment
9 with respect to his motive now to try to save himself? I mean,
10 it's the same thing, right. The argument is, you know, while
11 I'm sure it's going to be you're facing all this time, you have
12 every motive you know to make something up to save yourself,
13 why -- why do you need this for any extra motivation?

14 MR. COLEMAN: Certainly he has that motive on, you
15 know, 5(k)(1), other motions being filed, cooperating and
16 letting his cooperation being known to the Government when
17 sentencing comes. Of course there's motive for that. I think
18 this is an additional layer of motive. In addition, Your
19 Honor, this goes back to at the point that he's originally
20 arrested on the case, before he's had a chance to presumably
21 talk to this lawyer, before he's sat down in proffer sessions,
22 before the Government's promised to file motions based on his
23 cooperation, things that give that second layer of motive that
24 Your Honor is discussing, before all of that, he has this
25 motive to cooperate as much as possible and to fabricate

1 because he was previously not fully forthcoming with the
2 federal government. Presumably, he could have said, listen, I
3 want to talk to you guys and they said, listen, man, we tried
4 to use you before, and you said, wait, wait, wait, I got all
5 this stuff for you. And it's only at a later date, because we
6 know that the guilty plea, the change of plea, didn't happen
7 right away. There was some time before that took place and
8 there was a number of proffer sessions that Mr. Banks
9 participated in.

10 THE COURT: Understood.

11 MR. COLEMAN: So, I don't think it's purely
12 cumulative, Your Honor.

13 MR. SCIOLLA: I agree, Judge, if I may, and I echo
14 Mr. Coleman's comments in offering. Excuse me. My thing too
15 is that it's not a long inquiry that would be required here.
16 It would simply be that a jury should know this man has been
17 down this road before. He's not an ingenue. He knows that if
18 I cooperate I have to do x, y, and z, and he knows what he
19 didn't do, the last go around, and that disqualified him as a
20 cooperator. So, in this situation, I think it's -- it's an
21 area of inquiry that the defendant should be permitted to
22 engage in to show a jury that this man might be doing this for
23 other motivations besides what the Court just touched upon,
24 which is obviously to get a much lesser sentence down the road.
25 So, like I said, I think the jury should know that this is not

1 the first time, you know, that this man has been to the
2 batter's box.

3 THE COURT: Okay. Paul?

4 MR. SHAPIRO: If I may, your Honor, I'm going to
5 share with the Court the document that counsel were provided.

6 THE COURT: Thank you.

7 MR. SHAPIRO: And -- and for the record, this is a --
8 this is a not very heavily redacted copy of the documents from
9 the FBI's informant file.

10 MR. COLEMAN: And that wasn't, just for the -- that
11 wasn't the only document I was referring to.

12 MR. SHAPIRO: You --

13 MR. COLEMAN: Also have Page 5 on the affidavit of
14 probably cause that I can hand up to Your Honor as well if
15 you'd like to see it?

16 THE COURT: Sure. Will the affiant be testifying?

17 MR. SHAPIRO: He's on the list. It's possible, but
18 --

19 THE COURT: And, then okay. And then let me -- I'll
20 look over, Mr. Shapiro, what you gave me. Got it, okay.

21 MR. SHAPIRO: So, the -- his CI file document is a
22 significant step in several respects. First of all, the
23 document says that the FBI, one of the questions is was the
24 source closed for cause, and the answer is no. So, that --
25 that makes the whole inquiry that much more tenuous. But, the

1 most critical fact is, is that the CI was not notified of the
2 closing of his closure as a confidential informant. So, the
3 suggestion by Mr. Sciolla that the witness knew that he had
4 been thrown out of the FBI, that he had been rejected for being
5 dishonest, just doesn't hold any water. What this -- what this
6 document says is that the primary reason that they closed him
7 out was that he was no longer available to him. They also
8 concluded that they had, not that he had lied to them, but that
9 he had not been as forthcoming as they would have wished. But,
10 the document says that they -- that they didn't advise him of
11 that, which would of course make sense because he had
12 apparently been arrested and was not available to them. So,
13 that --

14 THE COURT: Does the defense have anything to
15 indicate that Mr. Banks knew why he was closed as an informant
16 in December of 2014?

17 MR. COLEMAN: I do not, Your Honor, because I mean
18 the Government has not provided me with anything related to
19 that other than that the one document they just provided to
20 Your Honor, which that one document is at odds with the
21 document that I handed up to Your Honor --

22 THE COURT: Not really.

23 MR. COLEMAN: When the Government --

24 THE COURT: Not really. I mean, he wasn't closed for
25 cause, which could be a different reason than in Paragraph 12,

1 and in Paragraph 12, there's nothing to indicate that Banks was
2 told why he was closed as an informant.

3 MR. COLEMAN: That --

4 MR. SCIOLLA: Judge, I think it does.

5 THE COURT: Where?

6 MR. SCIOLLA: It says closing for cause, unauthorized
7 criminal activity.

8 THE COURT: Where?

9 MR. SHAPIRO: It says no.

10 THE COURT: No. The answer is no.

11 MR. COLEMAN: Guy --

12 THE COURT: The answer is no.

13 MR. SCIOLLA: That --

14 MR. SHAPIRO: That's an explanation of what the
15 definition of cause is.

16 THE COURT: Yes.

17 MR. SHAPIRO: It's a dictionary.

18 MR. COLEMAN: Your Honor, what I --

19 MR. SCIOLLA: Judge, it says right under that,
20 provide additional details.

21 THE COURT: But, he was not closed for cause.
22 General reason --

23 MR. SCIOLLA: Confidential --

24 THE COURT: Hold on. I can read it just as well as
25 you can. No longer in position to report.

1 MR. SCIOLLA: How about right under that?

2 THE COURT: Closing for cause is based on the facts
3 -- that's an explanation of what closing for cause is.

4 MR. SCIOLLA: No, under provide additional details.

5 THE COURT: CHS has been arrested. Those are
6 additional details.

7 MR. SCIOLLA: Yeah.

8 THE COURT: Would you recommend -- would you
9 recommend the CHS for reopening? Yes.

10 MR. SCIOLLA: Yeah, CHS has been arrested during
11 reporting time period and will likely be incarcerated for an
12 indefinite amount of time. In addition, CHS was determined to
13 be withholding information that would benefit --

14 THE COURT: Yes.

15 MR. SCIOLLA: -- agents in ongoing investigation.

16 THE COURT: Would you recommend the CHS for
17 reopening? Yes.

18 MR. SCIOLLA: Right. Well then --

19 THE COURT: Yes.

20 MR. SCIOLLA: -- shouldn't that be something we be
21 allowed to -- to explore?

22 THE COURT: No. No. I'll take more -- the key for
23 me is, this is important, but what's most important is there is
24 nothing that you can provide me that indicates that Mr. Banks
25 knew that in December of 2014 he was closed as an informant

1 because of concerns by government agents that he was not fully
2 forthcoming, because that undercuts all of the proffered
3 reasons for wanting to bring this to the jury's attention. I
4 will take a further look at this. Nothing I say today is
5 final. But, at first blush, this seems to be an area that you
6 cannot get into with Mr. Banks.

7 MR. SCIOLLA: Well, if I may respond, Judge, I don't
8 know how much of what we don't know is Brady material, because
9 this is all we've been given, and there may be a not sufficient
10 effort on the Government's part to disclose --

11 THE COURT: I think there's -- well, (a) I know these
12 lawyers, (b) I know that they have made a sufficient effort,
13 (c) when they realized very close to trial one prior time that
14 they had inadvertently not turned something over, they with hat
15 in hand, came into court and begged for a continuance because
16 they had dropped the ball and needed to make right. I have no
17 doubt that if there was anything like that, we wouldn't be here
18 ready to go to trial.

19 MR. SCIOLLA: Judge, I'm not imputing either
20 gentlemen in any way at all. I'm just simply saying that if
21 you don't ask those questions and that information doesn't
22 become available, we don't have any access to Mr. Banks --

23 THE COURT: Here's -- but, here's the other thing,
24 Guy, the motive -- and, again, I don't -- this is all I want to
25 say on this today and I'll look at it more closely for you. I

1 pledge to both of you to do that. But, one, I think it's
2 cumulative. You're going to have more than enough stuff to
3 beat him up on with respect to why he has a motive to tell the
4 Government what they want to hear. You don't need this to do
5 that. You say it's complimentary. That's a good way of
6 putting it, but it's cumulative. I don't think it adds much.
7 I mean, certainly, the fact that he committed other crimes or
8 that an agent thought he wasn't fully forthcoming is not nearly
9 as damaging to his credibility as probably anything else you're
10 going to drag out given his criminal history, his motive to lie
11 know, et cetera, so this isn't that important. Two, there's
12 nothing that indicates that he knew about this, which is the
13 whole reason for why you want to bring it up. And, you know,
14 three, I guess in descending order --

15 MR. SCIOLLA: Well, if we were allowed to ask him.

16 THE COURT: -- three, he wasn't closed out for cause
17 based on this form, so that's all I'll say about it today.
18 I'll look at it again and we can talk about it as we get
19 closer.

20 MR. SCIOLLA: Okay. Thanks, Your Honor.

21 THE COURT: All right. Thanks for bringing the issue
22 to my attention though. I appreciate that. Anything else that
23 the defense wanted to take up?

24 MR. SCIOLLA: I don't think so, Judge.

25 MR. COLEMAN: No, Your Honor.

1 THE COURT: Okay. That's all I had for today. Were
2 there any other matters either side wanted to kick around?

3 MR. PALIVIDAS: Your Honor, if I may just very
4 briefly?

5 THE COURT: Yes.

6 MR. PALIVIDAS: In terms of just setting technology
7 up so we have access to exhibits. Would we have -- would we be
8 able to access to the Court before so that we can at some point
9 --

10 THE COURT: Yes. The Court will open -- I assume
11 we're going to be the first jury being selected on a Thursday.
12 That's one of the reasons I like to do it. So, I assume we
13 will -- we will have the jurors up here by 9:45. Fair
14 estimate. It always takes -- you know when you're running late
15 for work and your clock in the kitchen says 7:30 and you walk
16 into your car and the clock in your car says 7:50, and you're
17 like, but I just left my kitchen? It's kind of like that with
18 the jurors. It's like they're ready --

19 MR. SCIOLLA: You mean like my e-mail.

20 THE COURT: Like your e-mail, but except this is
21 minutes, not months/years. They just never seem to get up
22 here. It's like, oh, they're ready and then we just sit
23 quarter to nine to closer to ten.

24 COURTROOM DEPUTY: I'd say closer to ten.

25 THE COURT: Jeff's already hedging and smartly.

1 Courtroom will be open by 8:30.

2 MR. PALIVIDAS: Okay.

3 THE COURT: You'll have access to the courtroom. If
4 you have -- thanks for raising this issue. If you have any
5 technology needs, you know, usually the high priced defense
6 lawyers just follow on the expert technology of the government
7 workers and that works very, very well. I'm sure they'll be
8 very cooperative, as they always are. If you guys have any
9 technology needs, please let us know. I know you've done this
10 drill with us before. And, if you have any separate technology
11 needs or requirements, please let us know and we'll work with
12 you to make sure you got it.

13 MR. PALIVIDAS: Thank you, Your Honor.

14 THE COURT: You're welcome. And, then the courtroom
15 will be locked each night, so you can leave what you want to
16 leave here. It's a -- it's not a bailment though.

17 MR. PALIVIDAS: Okay.

18 THE COURT: So, I'm not on the hook for anything that
19 disappears.

20 MR. PALIVIDAS: I wouldn't dare, Judge.

21 THE COURT: Mr. Lucini is.

22 MR. SCIOLLA: It's assigned disclaimers.

23 THE COURT: Yes. Sir?

24 MR. SHAPIRO: Your Honor, we had a -- we had a
25 discussion yesterday about Banks' criminal history, and having

1 had an opportunity to look at it over night, it seems to me
2 that his juvenile adjudications, which are 2006 and 2007,
3 should be out. The remaining ones, the remaining convictions,
4 it seems to me, are appropriately fair game, but --

5 THE COURT: Does defense have a different view on
6 that?

7 MR. COLEMAN: I would just -- probably not, Your
8 Honor. I would just have to review when he was released from
9 supervision on the juvenile cases, because presumably if the
10 release was within the ten-year date, then I might have an
11 argument.

12 THE COURT: I -- that could -- I'm not sure that
13 applies to juvenile adjudications.

14 MR. SHAPIRO: Juvenile adjudications have their own
15 rule.

16 THE COURT: Yes.

17 MR. SHAPIRO: They are presumptively excluded.

18 THE COURT: Yes.

19 MR. SHAPIRO: But, the Court still has discretion to
20 include them. My point here is, not only are they juvenile
21 adjudications, but they're also quite aging.

22 THE COURT: '06, '07. Yes.

23 MR. COLEMAN: I -- and I probably won't have an issue
24 with it, Your Honor. I just would want to double check. I
25 don't --

1 THE COURT: That's fair. Yes.

2 MR. COLEMAN: There's plenty of adult convictions to

3 --

4 THE COURT: Yes. That goes back to my prior ruling.

5 MR. COLEMAN: Yeah, I got you.

6 MR. SCIOLLA: I simply want to say, Judge, that if
7 there was a continuing pattern of criminal or criminality on
8 Mr. Banks' part, then perhaps the juvenile stuff would come in,
9 but it appears that there's about a seven-year hiatus between
10 his first adult brush with his --

11 THE COURT: Yes.

12 MR. SCIOLLA: -- last juvenile, so I'm not going to
13 really argue that.

14 THE COURT: I'll tell you, no one needs to file a
15 motion in limine on any of this stuff one way or the other. At
16 first blush, it seems that Mr. Shapiro is probably correct with
17 respect to the juvenile adjudications. Guy, if you were Joe,
18 take a different view on that, just please advise me and I'll
19 -- we'll decide the issue before trial.

20 MR. COLEMAN: Yes, Your Honor.

21 MR. SHAPIRO: The Government having conceded the
22 propriety of cross examination with the other ones though, it
23 does seem to me that under the rule they just simply get to
24 inquire about the fact of conviction, not the details and the
25 specifics of the crime, but just simply that he was convicted

1 of this crime on this date.

2 THE COURT: That's the way it's always been presented
3 and I'm sure it will be -- yes, Guy, you're --

4 MR. SCIOLLA: Yeah, I don't have a problem with that,
5 Judge.

6 THE COURT: Yes. Oh, could -- could you please
7 collaborate and prepare for me a one-pager, nothing more, of
8 the overview of the case that you would like me to read to the
9 jurors as part of jury selection? I give them a 30,000 foot
10 level on the case. I don't get into very much detail. I
11 typically script something out myself. I can do that. In a
12 recent case the lawyers actually gave me one that they had
13 agreed upon and it made my life a lot easier.

14 MR. SCIOLLA: We'll do that.

15 THE COURT: Okay. And, then -- yes, okay. I
16 appreciate that, and it took me seven years to realize I can
17 actually ask the lawyers to do that and I don't have to sit
18 there and write it on my yellow pad. I'm a slow learner, but I
19 get there. Anything else. Ms. Grasso, how are you?

20 MS. GRASSO: Good morning, Your Honor. First off, I
21 apologize. I thought the hearing was at 11.

22 THE COURT: That's okay.

23 MS. GRASSO: I had it on my calendar for the wrong
24 day. I just wanted to inquire as whether or not the Court
25 would like me just on standby? I don't need to be present in

1 the courthouse for the --

2 THE COURT: That's correct.

3 MS. GRASSO: Okay.

4 THE COURT: That's correct, and that's I think
5 consistent with how we left it the last time, right? I'm
6 pretty sure.

7 MS. GRASSO: I think so, but I wanted to make sure I
8 was here and asked for clarification about that.

9 THE COURT: Yes. Yes.

10 MS. GRASSO: Absolutely.

11 THE COURT: Have you -- and, Mr. Williams, you're
12 good with that? That's -- yes, okay. That goes back to that
13 conflict issue, okay. You have the best standby lawyer in the
14 city, I can assure you.

15 MR. WILLIAMS: Yes, sir. Thank you.

16 THE COURT: Okay.

17 MS. GRASSO: Okay, great. Thank you, Your Honor.

18 THE COURT: Thank you, Ms. Grasso.

19 MS. GRASSO: Absolutely.

20 THE COURT: Yes.

21 MS. GRASSO: Sorry for being late.

22 THE COURT: No, no, no. It's okay.

23 (Court/clerk conversation)

24 THE COURT: Defense counsel, if -- and I want to get
25 back to as one of the first thing we said, can you tell me now

1 that you won't have spectators for jury selection, because if
2 we are, we're going to have to do some leg work in advance of
3 Thursday?

4 MR. SCIOLLA: No, no.

5 MR. COLEMAN: None from us, Your Honor.

6 THE COURT: Mr. Williams and Mr. Rowland, you good?

7 MR. ROWLAND: I'm okay.

8 THE COURT: Yes?

9 MR. ROWLAND: Yes.

10 THE COURT: Okay, good. Mr. Williams?

11 MR. WILLIAMS: Yes.

12 THE COURT: Okay, thank you. All right. Thank you.

13 That saves us having to arrange for a separate courtroom
14 somewhere and audio and video equipment and all that. Thank
15 you very much. Anything else? Jeff, anything else?

16 COURTROOM DEPUTY: (No audible answer).

17 MR. SHAPIRO: I knew I was going to forget and I
18 almost did.

19 THE COURT: You know, Paul, it's a risk I take when I
20 say anything else here in the courtroom, so I'm used to it.

21 MR. SHAPIRO: So there are notices of forfeiture in
22 the case.

23 THE COURT: Yes.

24 MR. SHAPIRO: And there are -- there are three ways I
25 guess that we can go about doing it. We -- I mean, they're

1 entitled to a jury trial on the forfeiture issue so that we can
2 submit it to the jury, and we can file jury instructions for
3 that. Sometimes defendants just simply choose to have the
4 Court decide the forfeiture issues after the primary issues in
5 the case are disposed of, and sometimes they just stipulate
6 contingent on --

7 THE COURT: Plan C is usually the Court's favorite.

8 MR. SHAPIRO: So --

9 THE COURT: Have you had those discussions yet?

10 MR. SHAPIRO: We have not.

11 THE COURT: Okay.

12 UNIDENTIFIED SPEAKER: No, Your Honor, we haven't.

13 THE COURT: Keep me posted and we'll --

14 MR. SCIOLLA: I'm sorry --

15 THE COURT: Were we interrupting you?

16 MR. SCIOLLA: No -- well, yeah, as a matter of fact
17 you were, but that's okay.

18 THE COURT: All right. The forfeiture issues. We
19 were talking about the forfeiture issues.

20 MR. SCIOLLA: Yeah, I agree with Paul. You know,
21 eventually it's just going to be an issue that we can resolve,
22 but --

23 THE COURT: All right.

24 MR. SCIOLLA: -- I'm not looking for another jury
25 trial for forfeiture.

1 THE COURT: Okay.

2 MR. COLEMAN: That's where I'm at, too, Judge. I
3 think we just need to hammer it out, but I'm --

4 THE COURT: Got it. Thank you very much for raising
5 that.

6 MR. SCIOLLA: That's fine. Just don't interrupt me
7 again while I'm talking.

8 (Laughter)

9 THE COURT: I promise. Do I have appeal rights too?

10 (Laughter)

11 MR. SCIOLLA: Very few.

12 THE COURT: Yes. Anything else from anybody? All
13 right. Thanks, everybody.

14 UNIDENTIFIED SPEAKER: Thank you, Judge.

15 THE COURT: It's nice to see you all again and I'm
16 happy that we'll finally be able to get our trial, have our
17 trial, and let the jury decide. So, if you have any other
18 issues, problems, questions, comments, for any of us, please,
19 as you always do and are good about doing, contact Jeff. I'll
20 look for Mr. Stengel's supplements or changes or -- to the jury
21 instructions. We'll implement those. We'll turn a draft back
22 around to you next week to all counsel and -- great. Thanks
23 for everything. Thanks for all your hard work and your
24 cooperation on the case.

25 MR. COLEMAN: Thank you, Judge.

1 MR. SCIOLLA: Thank you, Judge.

2 THE COURT: Yes, sir.

3 MR. SHAPIRO: Thank you, Your Honor.

4 MR. STENGEL: Thank you, Your Honor.

5 * * * * *

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7 **C E R T I F I C A T I O N**

8 I, WENDY ANTOSIEWICZ, court approved transcriber,
9 certifies that the foregoing is a correct transcript from the
10 official electronic sound recording of the proceedings in the
11 above-entitled matter, and to the best of my ability.

12

13

14 /s/ Wendy Antosiwicz

15 WENDY ANTOSIEWICZ

16 J&J COURT TRANSCRIBERS, INC.

DATE: December 9, 2022

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